

JUDGE SEIBEL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CIV. 9584

-----x  
PAUL PESCE,  
on behalf of himself and all others similarly situated,

CLASS ACTION COMPLAINT

Plaintiff,

-against-

ASSET ACCEPTANCE LLC

Defendant.  
-----x

Plaintiff, by and through his undersigned attorney, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Paul Pesce (hereinafter “Pesce”) is a resident of the State of New York, Orange County. On or about February 7, 2008, plaintiff received a debt collection notice from defendant Asset Acceptance LLC.

5. Defendant Asset Acceptance, LLC is a collection agency engaged in the business of collecting debts with its principal place of business located in Delaware. Defendant regularly attempts to collect debts alleged to be due another. Its Registered Agent is the CT Corporation System, 111 Eighth Avenue, Floor 13, New York, NY 10011.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as of the date of plaintiff’s complaint, and their successors in interest (the “Class”). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Asset Acceptance, LLC.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692g, 1692g(a)(4) and 1692g(b).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about February 7, 2008, the defendant did send to the plaintiff a collection letter. Copy of said letter is annexed hereto as **Exhibit A**.

16. On February 25, 2008, plaintiff disputed the validity of the debt and requested verification that Asset Acceptance purchased the account at issue and requested the address of the Original creditor. **Exhibit B**.

17. Defendant requested payment of the debt prior to providing verification that it purchased the debt and prior to providing the address of the Original Creditor. **Exhibit C**.

18. Defendant attempts to collect its own debts while it is unable and/or unwilling to evidence that it is the present creditor and unable and/or unwilling to identify the address of the Original Creditor.

19. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION  
(Violations of the FDCPA)

20. Each of the above allegations is incorporated herein.

21. Defendant's debt collection letter violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692g, 1692g(a)(4) and 1692b(b) by attempting to collect disputed debts it can neither verify nor evidence.

22. As a result of defendant's violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

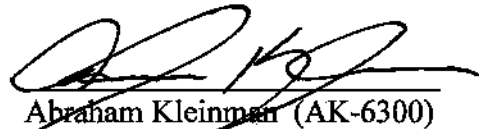
**WHEREFORE**, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages.
- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: November 5, 2008  
Uniondale, New York

  
Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RexCorp Plaza  
Uniondale, New York 11556-0165  
Telephone (516) 522-2621  
Facsimile (888) 522-1692

**EXHIBIT A**

**VARIANT NR 10556 ZOO**



**EXHIBIT B**

PAUL PESCE  
58 ELISE TER  
MIDLETOWN, NEW YORK 10941-3364

February 25, 2008

Asset Acceptance LLC  
PO Box 2036  
Warren, MI 48090-2036

Re:

BEST BUY HSBC ORIGINAL ACCOUNT NUMBER: 7021271287410242  
ASSET ACCEPTANCE LLC ACCOUNT NUMBER: 36293440  
DIPUTED BALANCE DUE: \$2738.89

Dear Asset Acceptance:

1. I dispute the statement that Asset Acceptance LLC **purchased** this Best Buy HSBC debt.
2. Please send me *verification* that Asset Acceptance LLC **purchased and now owns** this Best Buy HSBC debt.
3. Please send me **verification** of this disputed debt.
4. Please send me the *name* of the Original creditor.
5. Please send me the *address* of the Original creditor.

Thank You,



Paul Pesce

**EXHIBIT C**

# Asset Acceptance LLC

P.O. BOX 2036  
WARREN, MI 48090-2036  
Telephone: 800-525-8022

February 28, 2008

ASSET ACCEPTANCE LLC Account Number: 36293440

## DEBT VALIDATION

PRIOR/ORIGINAL CREDITOR:  
/BEST BUY HSBC

ORIGINAL ACCOUNT NUMBER:  
7021271287410242

NAME	PRINCIPAL	INTEREST/FEES	BALANCE
PAUL PESCE	\$2609.35	\$129.54	\$2738.89

LAST TRANSACTION DATE  
03/06/06

## PERSONAL INFORMATION

Address	58 ELISE DR	Social Security #	XXX-XX-9655
City/St/Zip	MIDDLETOWN NY 10941		

For Personal Assistance Call  
MARIO CAJAS Toll-Free 800-525-8022 Ext. 3703

Please make payments to:  
ASSET ACCEPTANCE LLC  
PO Box 2036  
Warren, MI 48090

Please include account number on your payment.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY OTHER INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE.

# Asset Acceptance LLC

Toll Free 800-525-8022 Ext. 3703

LOCAL: 210-979-3600

LOCAL OFFICE: SAN ANTONIO, TX

New York City License No. 1255250

February 28, 2008

RE : ASSET ACCEPTANCE LLC ACCT # 36293440  
BEST BUY HSBC Account # 7021271287410242

Dear PAUL PESCE:

Thank you for your request for further validation of your above mentioned account.

Enclosed please find an account statement prepared with information provided to us by the prior creditor.

Please contact me so that we can work toward resolving this matter.

**This is an attempt to collect a debt and any information obtained will be used for that purpose.**

Sincerely,

MARIO CAJAS- Phone: Toll Free 800-525-8022 Ext. 3703  
Debt Collector  
ASSET ACCEPTANCE LLC



P.O. BOX 2039  
WARREN, MI 48090-2039

Address Service Requested

36293440-7060-MJS6

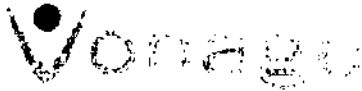


#BWNJRHH  
#0000000362934408#  
PAUL PESCE  
58 ELISE DR  
MIDDLETOWN NY 10941-3364



ASSET ACCEPTANCE LLC  
P.O. BOX 2036  
WARREN, MI 48090-2036





**Welcome - Raquel Pesce**  
Account Number: \*\*\*\*\*  
User Name: \*\*\*\*\*  
Account Name: Raquel  
Pesce  
Account Status: Active

[Dashboard](#) [Activity](#) [Billing](#) [Voicemail](#) [Account](#) [Orders](#) [Features](#) [Add-ons](#)

[Dashboard FAQs](#)

[Help](#) [Contact](#) [Log Out](#)

Recent calling activity for phone number:

1-(845)-725-7740

**Received Calls**

Date	Time	From	Type	Duration (hh:mm:ss)
Oct 20, 2008	02:49 PM	 18666431422		00:01:00